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Dear Sirs/Mesdames:

**Re: Proposed National Instrument 41-101 (the “Instrument”) and related amendments**

We are writing to provide our comments on the Instrument. Our comments are limited to the impact of the Instrument on investment funds. VenGrowth's \$1.1 billion under management

includes several labour-sponsored investment funds (LSIFs), an open-ended fund governed by NI 81-104, and a closed-end fund. We hope that our comments from this perspective will be helpful.

### **General Comments**

We support the general approach taken with Form 41-101F2; particularly the implementation of plain language principles.

We are concerned that there may be instances where the Instrument may contradict other Instruments governing mutual funds. For example, both the Instrument and NI 81-102 set forth requirements in respect of custodians and advertising that would apply to LSIFs. We submit that NI 81-102 should govern as there should only be one set of rules. Further, NI 81-102 would be more appropriate since it was specifically developed for open-ended funds.

### **Specific Questions/Comments in respect of the Instrument**

1. Section 4.1 requires that investment funds include a management report of fund performance in a long form prospectus in accordance with the Instrument. Instrument s. 15.1(1) stipulates that the management report of fund performance be incorporated by reference. For clarity, we submit that s. 4.1 be subject to s. 15.1(1) so that it is clear that funds in continuous distribution be permitted to incorporate such documentation by reference, as is the case for investment funds governed by NI 81-101.
2. Section 4.3(1) requires that any unaudited financial statements included in a long form prospectus must have been reviewed by an auditor in accordance with the relevant standards set out in the Handbook. NI 81-106 does not require investment funds to have interim financial statements reviewed (please see Section 2.12 of NI 81-106 and Section 3.4 of NI 81-106CP). NI 81-106 applies to funds governed by NI 81-101 and we submit that on this point, NI 81-106 should apply to all investment funds in continuous distribution. The issue was clearly addressed when NI 81-106 was implemented. A recurring obligation to have interim statements reviewed would be a substantive and costly change for funds in continuous distribution; the impact is much less severe for other issuers, for whom the review would be a one-time cost. Moreover, we see no policy rationale for treating some funds differently than others simply because they offer under different forms.
3. Section 9.2 contemplates items to be filed with a preliminary long form prospectus. Certain references are made to *pro forma* prospectus under this heading (see s. 9.2(b)(ii)). We submit that s. 9.2 specifically identify and/or distinguish the required documents for filing a preliminary long form prospectus and the required documents for filing a *pro forma* long form prospectus

### **Specific Questions/Comments in respect of the Form 41-101F2**

4. Part 7 of the Instrument deals with “Non-Fixed Price Offerings” and is specifically not applicable to investment funds in continuous distribution. On its face, this suggests that section 1.6(c) of the form, which is entitled “Non-Fixed Price Distributions”, would not apply to funds in continuous distribution that offer under the form, such as LSIFs and funds governed by NI 81-104. This would leave the prospectuses of such funds with no disclosure of the items set out in section 1.6. We submit that the heading of section 1.6(c) be changed and that “net asset value of a security” be added as fourth pricing option in section 1.6(c).

5. Section 5.4 of the form requires LSIF prospectuses to include a table containing certain information about their investee companies. We submit that this table should be removed. Although a similar requirement is included in Ontario Form 45 (the current LSIF prospectus form that is being replaced through the Instrument), in substance this disclosure is already required by NI 81-106 in a clearer and more meaningful way.

The first and second columns of the table largely replicate information that LSIFs are already required to include in their financial statements pursuant to Part 8 of NI 81-106 (specifically, name and sector of each investee company) and LSIFs are also required to list their top 25 holdings in their MRFP. The third column is meaningless to investors since it provides partial details about the ownership of private companies whose overall capital structures are not publicly known and who often have many classes of shares. By mandating disclosure of “value”, the fourth column would effectively force LSIFs to disclose the carrying value of each private investee. When NI 81-106 was drafted, extensive discussions were held between the securities regulators and members of the LSIF community about this issue. The discussions concerned the prejudice that would result from disclosure of the carrying value of individual private companies; both to the investee companies and to stakeholders of LSIFs. In finalizing NI 81-106, it was determined that the appropriate disclosure of value would be made in the Statement of Investment Portfolio by aggregating investments in investees by stage and sector.

Alternatively, if this table is to be retained, we submit that the disclosure in the fourth column be determined based on “cost” rather than “value”.

6. Section 12.1(2)(a) of the Instrument states that Part 12 of the Instrument does not apply to mutual funds. Therefore, we submit that s. 21.6 be deleted from Form 41-101F2 to eliminate potential confusion.

Thank you for your consideration of the foregoing. Should you have any questions or concerns, please do not hesitate to contact me at (416) 628-9256.

Yours truly,

(signed)  
Ryan Farquhar  
Legal Counsel